

House Study Bill 132

SENATE/HOUSE FILE _____
BY (PROPOSED JUDICIAL
BRANCH BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the issuance of temporary orders modifying an
2 order of child support or custody.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
4 TLSB 1258DP 82
5 pf/je/5

PAG LIN

1 1 Section 1. Section 598.21C, Code 2007, is amended to read
1 2 as follows:
1 3 598.21C MODIFICATION OF CHILD SUPPORT, SPOUSAL SUPPORT, ~~OR~~
1 4 MEDICAL SUPPORT, AND CHILD CUSTODY ORDERS.
1 5 1. CRITERIA FOR MODIFICATION. Subject to 28 U.S.C. }
1 6 1738B, the court may subsequently modify child, spousal, or
1 7 medical support orders when there is a substantial change in
1 8 circumstances. In determining whether there is a substantial
1 9 change in circumstances, the court shall consider the
1 10 following:
1 11 a. Changes in the employment, earning capacity, income, or
1 12 resources of a party.
1 13 b. Receipt by a party of an inheritance, pension, or other
1 14 gift.
1 15 c. Changes in the medical expenses of a party.
1 16 d. Changes in the number or needs of dependents of a
1 17 party.
1 18 e. Changes in the physical, mental, or emotional health of
1 19 a party.
1 20 f. Changes in the residence of a party.
1 21 g. Remarriage of a party.
1 22 h. Possible support of a party by another person.
1 23 i. Changes in the physical, emotional, or educational
1 24 needs of a child whose support is governed by the order.
1 25 j. Contempt by a party of existing orders of court.
1 26 k. Entry of a dispositional or permanency order in
1 27 juvenile court pursuant to chapter 232 placing custody or
1 28 physical care of a child with a party who is obligated to pay
1 29 support for a child. Any filing fees or court costs for a
1 30 modification filed or ordered pursuant to this paragraph are
1 31 waived.
1 32 l. Other factors the court determines to be relevant in an
1 33 individual case.
1 34 2. ADDITIONAL CRITERIA FOR MODIFICATION OF CHILD SUPPORT
1 35 ORDERS.
2 1 a. Subject to 28 U.S.C. } 1738B, but notwithstanding
2 2 subsection 1, a substantial change of circumstances exists
2 3 when the court order for child support varies by ten percent
2 4 or more from the amount which would be due pursuant to the
2 5 most current child support guidelines established pursuant to
2 6 section 598.21B or the obligor has access to a health benefit
2 7 plan, the current order for support does not contain
2 8 provisions for medical support, and the dependents are not
2 9 covered by a health benefit plan provided by the obligee,
2 10 excluding coverage pursuant to chapter 249A or a comparable
2 11 statute of a foreign jurisdiction.
2 12 b. This basis for modification is applicable to petitions
2 13 filed on or after July 1, 1992, notwithstanding whether the
2 14 guidelines prescribed by section 598.21B were used in
2 15 establishing the current amount of support. Upon application
2 16 for a modification of an order for child support for which
2 17 services are being received pursuant to chapter 252B, the
2 18 court shall set the amount of child support based upon the
2 19 most current child support guidelines established pursuant to

2 20 section 598.21B, including provisions for medical support
2 21 pursuant to chapter 252E. The child support recovery unit
2 22 shall, in submitting an application for modification,
2 23 adjustment, or alteration of an order for support, employ
2 24 additional criteria and procedures as provided in chapter 252H
2 25 and as established by rule.

2 26 3. APPLICABLE LAW. Unless otherwise provided pursuant to
2 27 28 U.S.C. } 1738B, a modification of a support order entered
2 28 under chapter 234, 252A, 252C, 600B, this chapter, or any
2 29 other support chapter or proceeding between parties to the
2 30 order is void unless the modification is approved by the
2 31 court, after proper notice and opportunity to be heard is
2 32 given to all parties to the order, and entered as an order of
2 33 the court. If support payments have been assigned to the
2 34 department of human services pursuant to section 234.39,
2 35 239B.6, or 252E.11, or if services are being provided pursuant
3 1 to chapter 252B, the department is a party to the support
3 2 order.

3 3 3A. MODIFICATION OF CHILD CUSTODY ORDERS. Modifications
3 4 of orders pertaining to child custody shall be made pursuant
3 5 to chapter 598B. If the petition for a modification of an
3 6 order pertaining to child custody asks either for joint
3 7 custody or that joint custody be modified to an award of sole
3 8 custody, the modification, if any, shall be made pursuant to
3 9 section 598.41.

3 10 3B. TEMPORARY MODIFICATION OF CHILD SUPPORT OR CHILD
3 11 CUSTODY ORDERS. While an application for modification of a
3 12 child support or child custody order is pending, the court
3 13 may, on its own motion or upon application by either party,
3 14 enter a temporary order modifying an order of child support or
3 15 child custody. The court may enter such temporary order only
3 16 after service of the original notice, and an order shall not
3 17 be entered until at least five days' notice of hearing, and
3 18 opportunity to be heard, is provided to all parties. In
3 19 entering temporary orders under this subsection, the court
3 20 shall consider all pertinent matters, which may be
3 21 demonstrated by affidavits, as the court may direct. The
3 22 hearing on the application shall be limited to matters set
3 23 forth in the application, the affidavits of the parties, and
3 24 the required statements of income. The court shall not hear
3 25 any other matter relating to the application for modification,
3 26 respondent's answer, or any pleadings connected with the
3 27 application for modification or the answer.

3 28 4. RETROACTIVITY OF MODIFICATION. Judgments for child
3 29 support or child support awards entered pursuant to this
3 30 chapter, chapter 234, 252A, 252C, 252F, 600B, or any other
3 31 chapter of the Code which are subject to a modification
3 32 proceeding may be retroactively modified only from three
3 33 months after the date the notice of the pending petition for
3 34 modification is served on the opposing party. The three-month
3 35 limitation applies to a modification action pending on or
4 1 after July 1, 1997. The prohibition of retroactive
4 2 modification does not bar the child support recovery unit from
4 3 obtaining orders for accrued support for previous time
4 4 periods. Any retroactive modification which increases the
4 5 amount of child support or any order for accrued support under
4 6 this subsection shall include a periodic payment plan. A
4 7 retroactive modification shall not be regarded as a
4 8 delinquency unless there are subsequent failures to make
4 9 payments in accordance with the periodic payment plan.

4 10 5. MODIFICATION OF PERIODIC DUE DATE. The periodic due
4 11 date established under a prior order for payment of child
4 12 support shall not be changed in any modified order under this
4 13 section, unless the court determines that good cause exists to
4 14 change the periodic due date. If the court determines that
4 15 good cause exists, the court shall include the rationale for
4 16 the change in the modified order and shall address the issue
4 17 of reconciliation of any payments due or made under a prior
4 18 order which would result in payment of the child support
4 19 obligation under both the prior and the modified orders.

4 20 6. MODIFICATION BY CHILD SUPPORT RECOVERY UNIT.
4 21 Notwithstanding any other provision of law to the contrary,
4 22 when an application for modification or adjustment of support
4 23 is submitted by the child support recovery unit, the sole
4 24 issues which may be considered by the court in that action are
4 25 the application of the guidelines in establishing the amount
4 26 of support pursuant to section 598.21B, and provision for
4 27 medical support under chapter 252E. When an application for a
4 28 cost-of-living alteration of support is submitted by the child
4 29 support recovery unit pursuant to section 252H.24, the sole
4 30 issue which may be considered by the court in the action is

4 31 the application of the cost-of-living alteration in
4 32 establishing the amount of child support. Issues related to
4 33 custody, visitation, or other provisions unrelated to support
4 34 shall be considered only under a separate application for
4 35 modification.

5 1 7. NECESSARY CONTENT OF ORDER. Orders made pursuant to
5 2 this section need mention only those factors relevant to the
5 3 particular case for which the orders are made but shall
5 4 contain the names, birth dates, addresses, and counties of
5 5 residence of the petitioner and respondent.

5 6 8. DUTY OF CLERK OF COURT. If the court modifies an
5 7 order, and the original decree was entered in another county
5 8 in Iowa, the clerk of court shall send a copy of the
5 9 modification by regular mail, electronic transmission, or
5 10 facsimile to the clerk of court for the county where the
5 11 original decree was entered.

5 12 EXPLANATION

5 13 This bill authorizes the court to temporarily modify a
5 14 child custody or child support order when an application to
5 15 modify is pending. The bill provides for notice of the
5 16 parties and limits the matters which may be addressed by the
5 17 court in entering the temporary order.

5 18 LSB 1258DP 82

5 19 pf:nh/je/5